



Memorandum

Date 1 MAY 2 1986

From : Director  
Indian Health Service

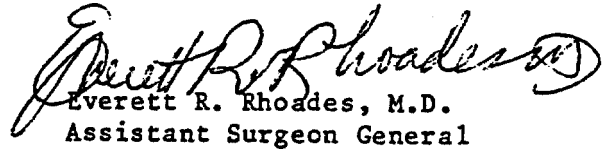
SGM 86-11

Subject : Three Party Agreement on Indian Access to Health Programs

To : IHS Executive Staff  
Area/Program Directors  
Headquarters Division Directors

I Am very happy to transmit the attached copy to the "Three Party Agreement" between the Public Health Service, the Health Care Financing Administration and the Office for Civil Rights. This agreement was signed on March 31 and is a revision of a 1974 agreement which spelled out the Department's policy as to the rights of the Indian people to equal access to health services from Federal, State, and local programs on the same basis as other citizens.

The new agreement updates the policy and provides new procedures for reporting suspected violations of the Civil Rights Act. It should be given wide distribution and studied carefully in order that it may be promptly implemented throughout the Indian Health Service.

  
Everett R. Rhoades, M.D.  
Assistant Surgeon General

Attachment

## MEMORANDUM OF AGREEMENT

### PROVISION OF MEDICAL SERVICES TO AMERICAN INDIANS AND ALASKA NATIVES

#### I. Purpose

The purpose of this memorandum of agreement is to revise the current memorandum of agreement which became effective on December 17, 1974. This revision will restate Department, policy concerning the access of American Indians and Alaska Natives to medical services provided by programs or facilities receiving financial assistance from the Department or from another Federal agency which has delegated to the Department's Office for Civil Rights enforcement responsibilities under Title VI of the Civil Rights Act of 1964. This will also update the procedures and responsibilities of the signatories in light **of** intervening reorganizations and experience under the agreement of December 17, 1974.

#### II. Policy

American Indians and Alaska Natives are entitled under the Fifth and Fourteenth Amendments to the Constitution of the United States, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1 et. seq., to equal access to State, local, and **Federal** programs to which other citizens are entitled.

The United States Indian Health Service (IHS) is a residual rather than primary health service resource. This is reflected in the Code of Federal Regulations at 42 CFR 36.12 (c) and 42 CFR 36.23 (f). The IHS program is a discretionary program that deals with gaps that exist in the availability and accessibility of the health service systems serving those Indian communities for whom funds have been provided to IHS by the Congress. The IHS program **is** not an entitlement program or an insurance program and, therefore, cannot be considered a third **party** for either reimbursement or eligibility purposes **by** any State, local or other Federally assisted program absent a specific Federal law to the contrary.

Pursuant to Title XIX of the Social Security Act, 42, U.S.C. 1396 et seq.; the Snyder Act, 25 U.S.C. 13; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d-1 et seq., Department policy related to health care for American Indians and Alaska Natives is:

- (1) Eligible American Indians Or Alaska Natives, whether or not enrolled members Of a State or federally recognized reservation, colony, native village, or rancheria, or

similar grouping, are entitled to all services of payment for service's for which other eligible persons are "entitled.

- (2) The eligibility of an American Indian or Alaska Native under any State's medical assistance program, whether providing direct services or meeting the cost of the services provided therein, is not affected by the use of or eligibility for services provided by IHS facilities or contractors.
- (3) The eligibility of an American Indian or Alaska Native for medical services administered by a recipient of Federal financial assistance, in whole or in part, or any third party payment for medical services, whether or not such third party payments are federally assisted, is not affected by the use of or eligibility for services provided by IHS facilities and contractors..
- (4) Services-available from or eligibility for contract health services from IHS cannot be considered as an alternative resource which would preclude eligibility of American Indians or Alaska Natives for services or payment for services available to the general population.
- (5) American Indians and Alaska Natives shall have the same rights to receipt of medical services under a State plan approved under any of the public assistance Titles of the Social Security Act, including Title XIX, Medicaid, as do all other eligible individuals.
- (6) Under the provision of its approved medical assistance plan the State agency is responsible for meeting the cost of the services provided therein for all individuals, regardless of race or national origin, who apply and are found eligible.
- (7) No recipient of Federal financial assistance may, therefore, refuse to certify as eligible or fail to provide health services to American Indians or Alaska Natives on the ground that IHS services are available. Such refusals exclude persons from the provision of such services solely on grounds of race or national origin, in violation of Title VI of the Civil Rights Act of 1964.
- (8) In the case of a person who qualifies as an American Indian or Alaska Native, and who is eligible for the services of the Indian Health Service/Public Health Service or the Department of Health and Human Services, IHS may assume residual responsibility for medical care and services that are.

encompassed by the appropriate State plan. This does not relieve the States from the obligation-to--make those services which are generally available to other eligible members of their overall-populations also available to American Indians and Alaska Natives

### III. Implementation

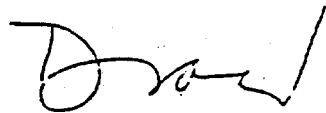
- A. The Office for Civil Rights (OCR), Department of Health and Human Services shall, within the limits of its authorities and resources
  - f. Designate the Deputy Director, Office of Program Operations and each OCR Regional Manager to serve as liaison with IRS for civil rights complaints and other civil rights activities related to this agreement;
  2. Require State and local agencies and medical service providers receiving Federal financial assistance under any State's 'medical assistance program to provide such information as may be necessary to effectuate compliance with Title VI and to implement the provisions of this agreement. Such information will be specified by the Director, Office for Civil Rights, pursuant to his/her authority under 45 CFR.80.6;
  3. Conduct an investigation of any complaint or other information received from IRS which alleges that an American Indian or Alaska Native was refused treatment by a health care provider, was denied eligibility for third party payment benefits by a State and local agency, or was in any way subjected to discrimination by a recipient in violation of Title VI. Such complaints or other information will be forwarded by IHS to the appropriate Regional Manager of the Office for Civil Rights;
  4. Require that State and local agencies responsible for the administration of medical services programs effectively communicate the availability of services to American Indian or Alaska Native communities;
  5. Commence activities leading to formal enforcement proceedings which may result in termination of Federal financial assistance, or use other means authorized by law to obtain compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C; 2000d-1 et. seq., where a recipient has failed to provide


information as required in-paragraph two above, or where there has been a finding by OCR that a recipient has refused service or eligibility for third party payment benefits ON the sole ground that an individual is eligible for IHS services, or where an American Indian or Alaska Native was in any way subjected to discrimination-by a recipient in violation of Title VI;

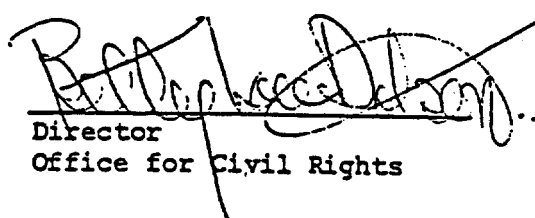
6. Consult with IHS: Area/Program Offices on draft Letters of Findings (LOFs) and proposed corrective action plans concerning discrimination against American Indians or Alaska Natives based on their eligibility for IHS programs. Comments IHS may have will be taken into consideration when finalizing LOFs and corrective action plans; and
  7. Refer complaints of discrimination against American Indians or Alaska Natives to the appropriate Federal agency when those complaints involve any program over which the-Department does not have jurisdiction.
- B. The Indian Health Service/Public Health Service, within the limits of its authorities, resources, and program scope shall:
1. Work with the Bureau of Indian Affairs, the Health Care Financing. Administration, other government agencies, tribal governments, and voluntary agencies to identify the number of American Indians and Alaska Natives who are or may be eligible for services or programs administered by other Federal agencies, or by State, local, and private entities receiving Federal financial assistance.
  2. Work with tribal government, national, area, and local Indian Health Boards, Indian Health Service hospitals, and interested groups and organizations to inform American Indians and Alaska Natives about Federal, State, and local health services payment programs for which they, as members of the general population, are eligible on the same basis as all other qualified recipients
  3. Assist American Indians and Alaska Natives to acquire certification for health services and programs of other Federal agencies and for State, local, and private entities receiving financial assistance and to file complaints with DCR;
  4. Notify OCR of any instance of American Indians and Alaska Natives. being referred to IHS hospitals by other health care providers although eligible for services or third party payments benefit at the referring facility:
  5. Enforce the requirement that IHS contractors seek third party payment for services rendered to American Indians and Alaska

- Natives who, in addition to qualifying for IHS programs, are
- 5 . eligible to receive services under third-party reimbursement mechanisms;
  - 6 . Notify OCR, DHHS of contractors who refuse to comply with above (#5). requirement; and
  7. Notify OCR of any instance that comes to IHS's attention where a State or local agency denies services or claims that an American Indian or Alaska Native is ineligible for that agency's program because they are eligible for IRS programs or because they are American Indian or Alaska Native.
- C. The Health Care Financing Administration (HCFA) shall, within the limits of its authorities, resources and program scope:
1. Assure that no state plan or practices shall permit a State or local agency to refuse to certify eligibility or fail to provide services on the ground that the individual is eligible for IHS services or that such services are accessible and available;
  2. Inform State agencies administering the Medicaid program that medical services must be made available to eligible American Indians and eligible Alaska Natives in the same manner as they are available to other Medicaid recipients within the same state. Also application procedures as specified in 42 CFR, Parts 435 and 436 must be adhered to in a manner assuring equal treatment to other applicants in the application and eligibility determination process;
  - 3: At the request of State Medicaid agencies, within existing priorities and to the extent that resources are available, provide technical assistance to State Medicaid program officials so that the State may develop procedures it deems appropriate by which the eligibility of American Indians and Alaska Natives may be established prior to the time that the need for services or third party reimbursement of medical costs may arise;
  4. Notify OCR of any instances that come to HCFA's attention where a State or local agency denies eligibility or claims that an American Indian or Alaska Native is ineligible for that agency's programs because he/she is eligible for IRS programs or because he/she is an American Indian or Alaska Native.

- . D. Nothing contained herein shall be construed as abrogating or limiting the rights of American Indians or Alaska Natives presently established under any treaty, statute, or regulation.

 MAR 31  
Assistant Secretary      Date  
for Health  
Public Health Service

 2/4/86  
Administrator      Date  
Health Care Financing  
Administration

 3/17/86  
Director      Date  
Office for Civil Rights